

THE

Piercing Cryes

OF THE

Poor and Miserable

PRISONERS

FOR

DEBT,

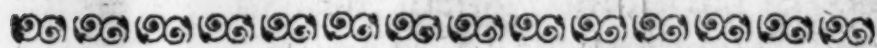
In all Parts of

ENGLAND.

SHEWING

Prisoners for Debt.

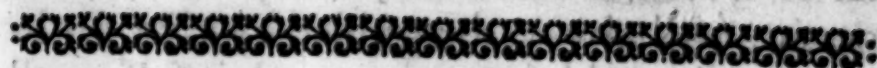
The Unreasonableness and Folly of Impri-
soning the BODY for DEBT, from the *Laws*
of GOD and REASON, *Custom of Nations, Hu-*
man Policy and Interest.



L O N D O N .

Printed in the Year MDCCXIV.

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T H E

Piercing Cryes

Of the Poor and Miserable

Prisoners for D E B T, &c.

H U M B L Y A D D R E S S ' D

To Her Most Sacred Majesty *ANNE*.
by the Grace of GOD, Queen of
Great-Britain, &c.

To the Right Honourable the *House of*
L O R D S, and to the Honourable the
House of C O M M O N S of *Great-Britain*,
at this Time in Parliament Assembled.

May it Please Your Most Sacred M A J E S T Y,
and you the Right Honourable and Honourable
the Houses of P A R L I A M E N T.

THE making good and wholesome
Laws for the Happiness of *Great*
Britain, being committed to your
Charge by GOD and your Coun-
try, you only seem proper to hear our
Cryes, and redress those unspeakable Mi-

series which cause them ; and you, without doubt, will always be guided by that Publick Spirit, which must extend it self to all those, who are thus put under your Care, and which none want so much, as those many Thousands of us Poor Unhappy People, who lye under the greatest Pressures of Fortune, that Humane Life is liable to suffer, that is, the *Extremity of Poverty*, in the most *rigid and severe Confinement*. The *Poor* meet with few Advocates, and we put our greatest Confidence in that true Christian Greatness of Mind, which has always been so Conspicuous in your Majesty, and thence diffus'd round to the rest of the Legislature.

We shall not therefore fear the Insinuation of *Cant*, when we shall urge, that *Our Saviour* at the last Day decides the Eternal Happiness or Misery of Men, by their Deeds of Charity, when he says, *You have seen me in Prison and have not visited me, &c.* When Truth itself tells us, That he is the Person neglected or assisted in the Poor and Imprison'd. Sure a Christian Legislature will not be deaf when CHRIST calls on it for Relief for those many Thousands who by these Lines apply themselves to it?

But to give your Majesty, and you the Right Honourable, and Honourable the Houses

Houses of Parliament, some small View of the Miseries we too justly complain of you must be inform'd, That the Prison of the *Marshalsea* alone generally contains seven or eight Hundred Prisoners; a great many of which are for the most part without those Necessaries, which are requir'd only for the bare Support of Life, two or three commonly perishing in one Day in this miserable and wanting Condition.

Captain *Derew* was a Person, who had done considerable Services in the War, and behav'd himself with much Bravery in the Field. But being confin'd in this Prison for Debt, and his Money all spent, he was found roasting a Rat for his Subsistence.

Sir *George Seaton* Bt. being reduc'd to so great Want, as not to be able to buy Sprats in their Season (the cheapest Food that is) was forced to pick up those smaller Sprats from a Dunghill, which had been thrown there by another Prisoner, who thought them not fit to eat.

It is not that we want many more Instances of this Nature, that we mention no more, but because we would not presume to take up too much of your important Time, by a multiplicity of Examples of this Nature, which these and other Prisons afford.

But should we remove our Consideration from this close Confinement to those, who

who have had the better Luck of gaining the Liberty of the *Queens-Bench* Rules, who languish under a Poverty, which renders them useless to the Publick, and uneasy to themselves. To see the miserable Objects there, and in all the Prisons in *England*, would touch any Man, that has any Humanity, with Compassion, and a True Christian with a Detestation of the Cruel Creditors, and an Endeavour to put an End to such a Tyranny, as is extreamly injurious to a Nation, and gratifies nothing but Revenge and a Barbarous Temper.

These poor Creatures, in the midst of this miserable Condition, perswade themselves, that this Parliament, which has so many publick Services in View, will not wholly overlook their Misfortunes; and when the Bill *for obliging Creditors to accept the utmost Satisfaction the Debtors were able to make*, their Prayers for the Prosperity of such Patriots encreas'd, with the Hopes they had of an end to a more than *Agyptian* Slavery: But they were again driven to Despair, when they found the Heart-hearted and Cruel Creditors had found Interest enough, even in such a Parliament, to destroy all the Good intended them, *by allowing the Benefit only to such, who ow'd but Fifty Pounds to any one*
Man

Man; which depriv'd Ten Parts in Eleven of all manner of Relief.

We therefore hope that a more extensive Act may be now granted in this *Publick Year of Peace*, because our Misfortunes are, in a great Measure, owing to the inevitable Consequences of so long and expensive a *Land-War*. In the 13th of *Charles II* we find an Act for the Relief of *Insolvent Debtors*, without any Limitation at all, after the conclusion of the Civil War, and the following Usurpation; and another in the 30th of the same Reign, after but a short *Dutch War*, which extended but to no less than Five hundred Pounds Principal Debt to any one Creditor.

On such Precedents, therefore, we are not without Hopes of being restor'd to our Liberty, by the Humanity and Christian Charity of the present Legislature, being willing to surrender our All, which by the Non-Prosecution of the chief and most considerable of our Creditors, seems to be their Desire.

We therefore unanimously agree to make this our common Supplication to you, not doubting but that you will justly believe, that by this means you will show your selves as good Patriots as Christians, for you are too good Politicians not to know the Damage, that the loss of so many People

ple is to the Publick; and we need not use many Words, to prove, that it is highly unchristian, to punish Misfortunes as Crimes of the deepest Dye; nay, worse than any Crime whatsoever; for a wretched starving Life in a Prison, is worse than a speedy Death, since it is better not to be, than to be miserable. The present Method of dealing with Debtors is of no manner of Advantage to Creditors, except in indulging the Cruelties of some Men, by leaving it in their Power to take away a Man's Liberty, and yet refuse all the real Satisfaction the Debtor is capable of making, by surrendring his All, working Tools only excepted, which is what every Prisoner is willing to do, tho' it be rejected by the Creditors, who can get no further Satisfaction by Imprisonment. For all the Punishment in Nature cannot make a Man do more, than he can do; and sure, so wise, and so Christian a Body of Men, as this Parliament, can never think the Misery only of the Debtor, a Satisfaction worthy of being indulg'd by Law.

Nor is it at all more reasonable, or less barbarous, that a Man who owes Thousands, but has little, or nothing to pay them withal, should want this Relief; for the greater his Debts are, the greater is his Misery, because out of all possibility of being

ing able to pay them ; whereas, if a Man owes but *Fifty Pounds*, he may find Friends or other means of discharging so small a Matter ; nay, the Creditor often will not be obstinate in his Confinement, hoping from Liberty a Discharge of such a Matter ; but a Man, that owes much, seldom finds such Favour, and is therefore more hopeless, and by consequence a fitter Object of the publick Pity and Compassion. Besides, some Men may owe *Five Hundred Pounds*, and not owe *Fifty Pounds* to any one Man ; whereas, another may not owe above *Fifty Pounds* in the World, and that may be all to one Man ; now, in this Case, the Man, that owes most, gets the Benefit of this Act, and he that owes least, must remain an unfortunate Sacrifice to the Barbarity of his Creditor. The most reasonable and most Christian way, therefore is, that all, who surrender fairly all they have, should have Relief ; for where nothing is, nothing can be had, by all the Misery and Torture in the World.

Further, the great Traders have the Benefit of the *Act of Bankruptcy*, by which, if they break for *One Hundred Thousands Pounds* they may, on the surrender of All, get their Liberty, and are allow'd *Five Pounds per Cent.* for what Money and Effects they discover. Is it not therefore unreasonable, that those

B

poor

poor Men, who fail in a much less manner, and owing vastly less Money, shou'd not have a like Benefit on the surrendering their All? Besides, it is worthy your Consideration, that many Gentlemen, who have had a generous Education, have yet, and daily do fall to Poverty, Is it not very hard, that those, whose former Lives make Misfortunes, Want and Captivity more grievous, than other Mens, should be the only Men excluded from all Relief, especially when they are willing to comply with the Conditions, and surrender all they have? and this is the Case of Hundreds at this Time in Prison.

Your Power is sufficient to do this Service to your Country, which is so worthy of *Patriots* and of *Christians*, by making so many Miserable Men, now a Burthen to themselves, and useless to the Publick, beneficial to their Country and happy.

I confess, I never could hear the Shadow of a Reason for the *Capias*, and I am sure other Nations, whose Conduct we have Reason to think as wise and just as our own, have no such barbarous Custom, as that of keeping Insolvent Debtors to starve and perish in a Goal. The *Dutch* are as Trading a People as we, and stand as much upon Credit, and yet we shall find their Proceedings in this Case far different from

from ours, and while we speak contemptibly of them, they show themselves better *Politicians* and better *Christians* than we in this Particular.

To set this in a true Light, we shall give you Instances from many Nations both Ancient and Modern, Christian and Infidel : And to our Shame be it spoken, all excelling us in Tenderneſs to the Misfortunes of their unhappy Subjects.

We ſhall begin with the *DIVINE LAW*, we mean, the *Mosaic* Inſtitution. The Debtor was only oblig'd to become the Servant of the Creditor, taking his Wages for the Debt, but with theſe three Proviſoes: 1^{ſt}. That the Debtor ſhou'd not ſerve as a *Bondſlave*, but as a hired Servant. 2^{dly}. That the Creditor ſhou'd be ſo far from having the Power of Imprifoning the Body of the Debtor, that he ſhou'd not rule over him with Rigour. 3^{dly}. That he ſhou'd be releaſed after ſeven Years, and ſent away with a liberal Reward of Sheep, Corn and Wine. And *Solomon*, the wiſeſt of Kings, ſays, *If thou haſt not to pay, why ſhou'd he take thy Bed from under thee?*

To paſs from the Land of *Canaan* to other Countries, we ſhall find the very Heathens more merciful, than this *Chriſtian*, this *Proteſtane* Country.

(12)
Among the *HEATHENS*, we find that *Solon* endeavouring to establish the Government of his City, on the sure Foundation of good and wholesome Laws; the first Thing he did, he made an Edict for the clearing of all Debts contracted by Usury; for which Reason, *Solon* and his Friends were call'd *Creotopides*, Cutters of Debts; which, tho' it displeas'd many for a while, yet afterwards they found so much the Benefit thereof, that they made publick Sacrifices for Joy, which were call'd *Seisachthia*, or Feasts of Discharge.

Among the *LACEDEMONIANS*, the Custom of Imprisoning one another was not so much as thought of: For they in Pursuit of Victory and Renown, had other Business for their lusty young Men, than to macerate 'em in Goals, for the Humour of every peevish Usurer.

Lucullus finding *ASIA* full of the Oppressions of Creditors, to relieve the Debtor from the Tyranny of Imprisonment, order'd that the Creditor should enjoy the fourth part of the Profits and Revenue of the Debtor, leaving his Person free, which made him not only beloved in those Countries, but wish'd for, and desir'd by others.

Cæsar being Proconsul in *SPAIN*, finding the People embroil'd in Suits of Law,
and

and Strife betwixt Debtor and Creditor did not permit the Creditors to throw their Debtors in Goal, but ordain'd, that the Creditors should take yearly two Parts of the Debtor's Revenue, and that the Debtors should have the third Part to themselves to live on; which Act of his (the Story says) won him so great Estimation, that he return'd very rich from his Government.

And indeed the publick Charity of the ROMANS is a lasting Monument of their Heathenish Piety. For there were among them certain Officers call'd *Triumviri Mensarii*, from the Tables where they told their Money, who had a particular Charge and Authority to pay the Debts of poor Men.

Among the MAHOMETANS, we find the *Persians* very tender of the Welfare of poor Men fallen to Decay, there being in several Cities priviledg'd Places, among the rest, one more noted in *Ispahan*, call'd *Alla Capi*, or *Gods-Gate*, whether Debtors have Liberty to fly, and abide there till they have compounded with their Creditors.

The TURKS prohibit all Arrests of the Body. Therefore, if any Man will sue another at Law, he has neither Bailiffs nor Serjeants, but goes himself to his Adversary, and before Witness summons him before the *Cadie*, and this is agreeable to the very Words

Words of the Alcaran, *If thy Debtor cannot pay thee, stay 'till he can, and give him Alms, for this shall be better for thee.* Unhappy Reproach to True Religion! That the *Turks* shou'd yield such a Christian Obedience to the Law of *Mahomet*, and the Christians with such a *Turkish* Irreverence contemn the Law of God.

In some Parts of *GERMANY* they are very severe, in setting such a Brand on a Bankrupt's Reputation, as shall easily take from him the Opportunity of abusing others; yet they give his Body free Liberty to redeem his Credit.

Hence in *French*, *Monter l' Afsne* signifies to become Bankrupt, because that instead of Imprisoning the Body they only put him to Shame, compelling the Bankrupt to ride backward upon an Ass, with his Tail in his Hand, quite thorow the Town, where he dwelt.

In *HOLLAND*, a Well-govern'd and Flourishing Common-Wealth, no Man is compell'd to pay further than his Estate will run, and that with Christian Consideration of his Wife and Family; nor is any Man to be imprison'd for Debt, unless the Creditor will allow him Maintenance so long as he shall be there confin'd; which Customs are so well known, that 'tis needless to insist upon 'em.

FLANDERS,

FLANDERS, ITALY, and *SPAIN*, are unanimous in their Practice, for there no Man is detain'd in Prison for Debt above a Year and a Day, in which Time the Creditors have Power to sell the Estate of the Debtor; which being done, and the Wife's Dower taken out for Relief of her and her Children, the rest is divided: Then is the Debtor freed from those Debts for ever, and his Body releas'd at the Years End. This for the meaner Sort.

But for the Gentlemen and Persons of Quality, their Bodies are not to be touch'd, nor by any Means to be imprison'd for Debt, only the Estate is liable to Satisfaction, yet with a Reservation of such necessary Things, as Honour, Honesty, or Humanity may challenge, and therefore the Person, Arms, or Apparel, Bed and Chamber of a Soldier are not liable to Seizure, and the like Provision is made for other Gentlemen of Quality.

Neither do we find it to have been the Practice among our selves here in *ENGLAND* to make Arrests, appears by the Stile of our *Common Pleas Declarations* yet in Use, all which run Such a One *summonitus fuit ad Respond.* not apprehended like a Criminal, or brought *Vi & Armis* to the Bar.

The

The Brave and Wise Nation of the SCOTIS, now incorporated into one Body with the rest of Britain, by their Laws never permit any Subject of Scotland to be imprison'd for Debt, unless the Creditor allow the Debtor, thus confin'd, a Maintenance sufficient for his Support, on defect of the current Payment of which the Debtor is set at Liberty.

Therefore in former Times there was no *Capias*, but only in Actions *Quare Vi & Armis*, where after Judgment there was a *Capias* also *Pro Fine* for the King, as against a Criminal, as well as for Satisfaction of the Party.

But let us not forget the *Civil Law*, from whence we may easily gather what has been the Practice of the Wisest and most Flourishing Nations of the whole World, that being but a *Pandect* or Collection of the choicest institutions both of the *Greeks* and *Romans*.

Observe then, One of her Chief Maxims as to our Argument, *Qui vult cedere bonis, Liberatus est a Debito*, Relinquish Estate, and be free from Debt:

As for the *Barbarous* Custom of Arresting, there is no such Thing so much as mention'd, neither in the *Old Roman Law*, nor in the Institutions of *Justinian*, lineally descended from it. Therefore the Ancient

cient Roman Law Term was *In jus vocare*, which the Plaintiff himself was wont to do, by calling the *Defendant* before the *Prator* in the Presence of sufficient Witnesses, without the Assistance of his Double-Fee'd *MEN-TERRIERS*, to earth the Debtor, like a Fox, out of his Hole, whom his own severe Pursuit had hunted thither before. And to shew they aim at the Estate and not the Person, the first Question the *Prator* ask'd the *Defendant* was, *An Auctor esset?* Whether he had made away his Possession or Estate, to defraud his Creditor or not? And to signify how wary they were, to hinder the Encroachment of Malice and Litigious Envy, the *Plaintiff*, as well as the *Defendant*, was compell'd *ad Spondendum*, to put into Court a Gage of Money, to be forfeited if he prevail'd not in his Suit, which Forfeiture was call'd *Sacramentum*, because Publickly employ'd in the Great Expences of their Sacred Rites. And it may not be an Idle Question, whether such Forfeitures, if now in Use, wou'd not be as advantageous and less repin'd at, than some Impositions that have been found out.

To descend to the *Institutes* themselves, we find the same Method of Summoning the *Defendant* still continu'd in these very Words, *Omnium Actionum instituendarum*

Principium, &c. The first Commencing of all Actions proceeds from that Part of the Precept, by which the *Prætor* commands the Party to be call'd into Court. For it is necessary that the Party shou'd be first call'd, that is, call'd before him, who is to be Judge of the Cause: And if any One sought any other Way than this, the *Prætor* set a Fine of Fifty Shillings upon his Head.

After Condemnation they were so favourable, that this was the permanent Rule among them, set down by *Paulus Lib. 6. ad Plantium, In Condemnatione Personarum, &c.* *In the Condemnation of Persons who are sentenc'd to satisfy to the utmost of their Ability, not all that they have is to be violently extorted from them; but such Consideration is to be taken of them, that they may not want.*

To this purpose in the Title of *Replications*, we find it laid down for a Maxim, *That if the Debtor after Judgment, having relinquis'd his Goods, or Estate, be notwithstanding still sued by the Creditor, he shall have this Exception, or Plea for himself, quod bonis cesserit.*

Now for *Imprisonment of the Body*, to crave Aid of the Rules of Policy, is altogether vain and frivolous.

For

For the Strength of a Politick Body consists in the Number and Ability of its Members; but this Cruelty of one Man towards another, is the frequent Cause that so many Able and Lusty Men are forc'd to abandon their Native Soil, and give their Assistance to Foreign Princes, to the great Injury of their own Country. How many Young, Stout, and Able Bodies are pin'd away, and starv'd by tedious Imprisonment, for whom the Common Wealth might find as many Employments as they themselves were Persons?

'Tis a Strange and Awkard Piece of Policy, to suffer *Serjeants* and *Bailiffs* to depopulate our Cities and Counties to People their Goals; to take away the Strength and Glory of the Magistracy, to encrease the UNLAWFUL Gain of a Keeper.

In Times of MUTINY, what Advantages have the Opposers of Government had? What Assistance have they gain'd by the Hands of Men indebted, fearing to fall into the Power of their Creditors, tho' not suffer'd then to be so CRUEL as now, the Stories of the Followers of *David* in Holy Writ, and of *Cateline* and *Spartacus* in Profane History, and that Great Mutiny of the *Roman* People, that occasion'd the Election of their Protecting *Tribunes*, do evidently testify? And we read, That *Cæsar's*

Payment but of one desperate Man's Debts on the other Side, was to him a Great Lift to the Empire. If in those Times, the Fear only of being dunn'd, and sued, was so dangerous to the Common-Wealth, how much more liable is She now to such desperate Enterprizes, shou'd the Terrors of Bodily Imprisonment and Fair Opportunity meet together.

There is no Policy, no Kingdom, or Common-Wealth, that ought to admit a Law that occasions the Ruin and Destruction of her Subjects. But of how many Murders, Slaughters, and violent Deaths, have *Arrests* and the Dread of *Imprisonment* been the Cause? For the Law of Nature, let Man do what he can, will predominate in Man above all Humane Decrees; so that if any Man see another coming to lay violent Hands upon him, to Attack his Person, and Haul his Body to Prison, Nature teaches him to take the Assailor for his Capital Enemy, and to act the best he may in his own Defence. And therefore, should the Law absolutely command those Violences as necessary, (which is contrary to the Maxims of the Law of *ENGLAND*, which abhors all Force) yet wou'd not Man be restrain'd from making Resistance; so inherently does he love, so naturally is he bound to maintain his own Liberty.

And

And what is the Event of this? Generally One or Two Murder'd, and Another or Two Hang'd; thus is the Kingdom depriv'd of Three or Four Members at One Time.

It is farther remarkable, to the Shame of our Country, that there are more Men in the Prisons of this City alone for Debt, than in all the Goals of the whole *German* Empire: Who there grow besotted in the Cellars, to drive away Care, as they call it.

In short, to imprison the Poor, is to do what Nature and Christianity, as well as all wholesome Policies abhor, and to act in vain; to imprison the Rich is altogether ridiculous, a Prison to such being a Sanctuary to preserve their Estates.

The Creditor shou'd consider, that all Means of his Satisfaction must arise out of the Debtor's Labour, and Industry, or his Credit, out of the good Will of his Friends, or out of his own Estate; all which, but the last, are immediately lost by Imprisonment; and the last serves only to supply its Owner, without any Regard to the Creditors, as we have several late Instances in the *Fleet*, and *Queen's-Bench*.

It is plain from what has been said, that the *Laws of God and Reason, National Customs, the Civil Law, the Rules and Maxims*
of

of *Publick* and *Private Policy* and *Interest* are entirely against *Arresting*, and *Imprisoning* for *Debt*. A Proof, one wou'd think, sufficient to prevail with so Wise a Senate, to let us not be so separated from all the rest of the World in *Morals*, as we are in *Situation*; especially since the Original of Arresting Mens Bodies, and taking them in Execution for Debt, was grounded on those few Words in the 25th of *Edward III*:

The Defenders of this Statute say, that *How shall we get our Moneys, if Arrests be taken away?* We Answer, by the same Means which was formerly used, or as in the *Civil Law* by *Summons*, such as indeed is the *Original* in the *Common Pleas*, of as great Force to all Intents and Purposes, as if the Party had been Arrested. The Force of which is plainly seen in the *Subpœna's* in the High Court of *Chancery*, which being left at the House by a Messenger, and Oath made of the Service, the *Defendant* is compell'd to come into the Court, and answer the *Plaintiff* as effectually, as if he had expended *Five Pounds* on an Arrest; nor can the *Defendant* by the Proceedings of that Court be Arrested in his Person, unless he be so fool-hardy to stand out to a *Commission of Rebellion*.

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There might be many Ways not so odious to the Creditors, as a total Remission of the Debt : It is the Practice in Flanders, and in Picardv, that, when a Merchant or Trader, or Other, finds his Creditors hard upon him, and himself Insolvent at that Time, on his Petition, the Parliament of that District allows their Protection for Three, Four or Five Years for him to pay his Debts, during which Time the Debtor has his Liberty to use his Industry, to repair his broken Fortune, and to clear all his just Debts.

But, if after all, The Creditor must be satisfy'd with the Imprisoning of the Body of the Debtor, he ought to be oblig'd to maintain him in Prison, as in Holland and France, &c.

We beg you to add one Consideration more to what we have urg'd, that there are above Seven Hundred Bailiffs about this City and adjacent Parts, most of 'em have one, two or three Followers, and these All live on the Miseries of the Unfortunate, and an Arrest by Civility-Money, as they call it, and the Fees comes generally to *Thirty Shillings*, sometimes to *Four*, or *Five Guineas* ; (often more than the Original

right Debt) this is Robbing both the Plaintiff and Defendant; whereas, if every Summons were stamp'd with a Five or Ten Shilling Stamp, and all Bailiffs abolish'd, it would, by a very easy Computation, bring in a constant Revenue of Fifty or Sixty Thousand Pounds a Year, perhaps double the Money, and the Debtor, as well as the Creditor, much eas'd in the Suit.

May it Please Your MAJESTY, and You the, Right Honourable and Honourable LORDS and COMMONS.

These Reasons are submitted to You; The Eyes and Hopes of many are on You, and we beg You to remember, that this is the Cause that CHRIST JESUS has own'd, and You will engage the Prayers of Thousands, as long as this Nation lasts.

We beg you to add one Consideration more to what we have said, that there are above seven Hundred thousand in this City and adjacent Parts, most of them



F I N I S.